

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES WASHINGTON, JR. #366894,

Plaintiff,

v.

LT. NFN PLANTL, et al.,

Defendants.

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Civil Action No. **3:10-CV-2330-L**

MEMORANDUM ORDER AND OPINION

Before the court are the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, filed November 22, 2010. Petitioner did not file any objections.

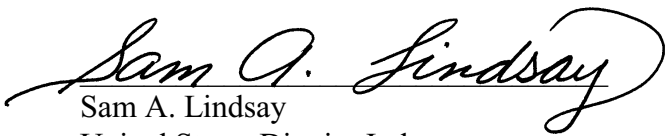
Petitioner James Washington Jr. (“Washington” or “Petitioner”) brings this suit pursuant to 42 U.S.C. § 1983. The magistrate judge recommended that this court dismiss the Petitioner’s suit for two reasons. First, the magistrate judge recommended that the court dismiss Petitioner’s suit because he is permanently enjoined from filing new civil actions without leave of the court and he did not obtain leave to initiate this lawsuit. The magistrate judge found that the Western District of Texas previously issued a sanction order to Petitioner, permanently enjoining him from initiating any new civil actions without first obtaining leave of the court. *Washington v. Green*, 5:96-cv-77 (W.D. Tex., April 9, 1996, appeal dismissed). Earlier this year, Petitioner violated the order and initiated a lawsuit in the Eastern District of Texas. *Washington v. Web*, No. 6:10-cv-114, 2010 WL 2330401, at *1 (E.D.Tex. June 9, 2010). The court applied the sanction previously imposed against Petitioner in the Western District of Texas. *Id.*

Second, the magistrate judge concluded that Petitioner’s lawsuit should be dismissed for his failure to comply with the “three-strikes” provision of 28 U.S.C. § 1915(g). On November 22, 2010,

Magistrate Judge Renee Harris Toliver ordered Petitioner to pay the requisite filing fee. She also admonished Petitioner that failure to pay such fee would subject the action to dismissal. To date, Petitioner has not filed the requisite fee as ordered. The magistrate judge now recommends that this case be dismissed with prejudice as to the refiling of an *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit with the full payment of the \$350 filing fee.

Having reviewed the pleadings, file, and record in this case, and the findings and conclusions of the magistrate judge, the court determines that the findings and conclusions are correct. The magistrate judge's findings and conclusions are therefore **accepted** as those of the court. The court therefore **dismisses with prejudice** Petitioner's suit to the extent that it relates to the refiling of an *in forma pauperis* lawsuit raising the same claims as herein presented, but **dismisses it without prejudice** to the extent that Petitioner elects to pay the \$350 filing fee. Further, Petitioner is advised that should he elect to pay the filing fee and refile his case, he must also show that he has fully complied with all sanctions imposed upon him.

It is so ordered this 21st day of December, 2010.


Sam A. Lindsay
United States District Judge